

## National Credit Union Administration

## § 701.33

to part 705 is repaid, nonmember share deposits accepted to meet the matching requirement are subject to this section.

[54 FR 31184, July 27, 1989, as amended at 54 FR 51384, Dec. 15, 1989; 55 FR 1794, Jan. 19, 1990; 58 FR 21645, Apr. 23, 1993; 59 FR 26102, May 19, 1994; 61 FR 3790, Feb. 2, 1996]

### **§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.**

(a) *Official*. An *official* is a person who is or was a member of the board of directors, credit committee or supervisory committee, or other volunteer committee established by the board of directors.

(b) *Compensation*. (1) Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

(2) For purposes of this section, the term *compensation* specifically excludes:

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed, if the payment is determined by the board of directors to be necessary or appropriate in order to carry out the official business of the credit union, and is in accordance with written policies and procedures, including documentation requirements, established by the board of directors. Such payments may include the payment of travel costs for officials and one immediate family member per official;

(ii) Provision of reasonable health, accident and related types of personal insurance protection, supplied for officials at the expense of the credit union: *Provided*, that such insurance protection must exclude life insurance; must be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by rea-

son of carrying out the duties or responsibilities of the official's credit union position; must cease immediately upon the insured person's leaving office, without providing residual benefits other than from pending claims, if any; and

(iii) Indemnification and related insurance consistent with paragraph (c) of this section.

(c) *Indemnification*. (1) A Federal credit union may indemnify its officials and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties.

(2) Indemnification shall be consistent either with the standards applicable to credit unions generally in the state in which the principal or home office of the credit union is located, or with the relevant provisions of the Model Business Corporation Act. A Federal credit union that elects to provide indemnification shall specify whether it will follow the relevant state law or the Model Business Corporation Act. Indemnification and the method of indemnification may be provided for by charter or bylaw amendment, contract or board resolution, consistent with the procedural requirements of the applicable state law or the Model Business Corporation Act, as specified. A charter or bylaw amendment must be approved by the National Credit Union Administration.

(3) A Federal credit union may purchase and maintain insurance on behalf of its officials and employees against any liability asserted against them and expenses incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable state law or the Model Business Corporation Act.

[53 FR 29642, Aug. 8, 1988, as amended at 57 FR 54503, Nov. 19, 1992]

EFFECTIVE DATE NOTE: At 66 FR 65629, Dec. 20, 2001, § 701.33 was amended by revising the last sentence of paragraph (b)(2)(i), effective Jan. 22, 2002. For the convenience of the user, the revised text is set forth as follows:

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## 12 CFR Ch. VII (1–1–02 Edition)

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\* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \* Such payments may include the payment of travel costs for officials and one guest per official;

\* \* \* \*

	<i>Per-</i> <i>cent</i>
Hawaii .....	40
Alaska .....	36
Washington, DC .....	19
Boston .....	17
San Diego .....	15
Los Angeles .....	14
New York .....	13
San Francisco .....	13
Seattle .....	10
Chicago .....	7
Philadelphia .....	7

### § 701.34 Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.

(a) *Designation of low-income status.*  
(1) Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) authorizes federal credit unions serving predominantly low-income members to receive shares, share drafts and share certificates from nonmembers. In order to utilize this authority, a federal credit union must receive a low-income designation from its Regional Director. The designation may be removed by the Regional Director upon notice to the federal credit union if the definitions set forth in paragraphs (a) (2) and (3) of this section are no longer met. Removals may be appealed to the NCUA Board within 60 days. Appeals should be submitted through the Regional Director.

(2) The term *low-income members* shall mean those members who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics or those members whose annual household income falls at or below 80 percent of the median household income for the nation as established by the Census Bureau or those members otherwise defined as low-income members as determined by order of the NCUA Board.

(i) In documenting its low-income membership, a credit union that serves a geographic area where a majority of residents fall at or below the annual income standard is presumed to be serving predominantly low-income members. In applying the standards, Regional Directors shall make allowances for geographical areas with higher costs of living. The following is the exclusive list of geographic areas with the differentials to be used:

(ii) The term *low-income member* also includes those members who are enrolled as full-time or part-time students in a college, university, high school, or vocational school.

(3) The term *predominantly* is defined as a simple majority.

(b) *Receipt of secondary capital accounts by low-income designated credit unions.* A Federal credit union having a designation of low income status pursuant to paragraph (a) of this section may offer secondary capital accounts to nonnatural person members and nonnatural person nonmembers on the following conditions:

(1) Prior to offering secondary capital accounts, the credit union shall adopt, and forward to the appropriate NCUA Regional Director, a written plan for use of the funds in the secondary capital accounts and subsequent liquidity needs to meet repayment requirements upon maturity of the accounts.

(2) The secondary capital account must be established as a uninsured secondary capital account or other form of non-share account.

(3) The maturity of the secondary capital account must be for a minimum of five years.

(4) The secondary capital account must not be redeemable prior to maturity.

(5) The secondary capital account shall not be insured by the National Credit Union Share Insurance Fund or any governmental or private entity.

(6) The secondary capital account holder's claim against the credit union must be subordinate to all other claims including those of shareholders, creditors and the National Credit Union Share Insurance Fund.